IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7856 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAVJIBHAI GANGARAMBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

RULE SERVED BY DS for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 16/11/2000

ORAL JUDGEMENT

#. The detention order came to be passed against the petitioner for Prevention of Anti Social Activity Act 1985 (hereinafter referred to as the PASA Act) on 1.3.2000 by the Police Commissioner, Rajkot City, Rajkot

and the petitioner came to be detained from 2.3.2000. Thus detention order came to the challenged by the petitioner in this Special Civil Application under Article 226 of the Constitution of India.

#. The detention order indicates that four offences were registered against the petitioner under the Bombay Prohibition Act. The allegations was that the petitioner was dealing in English liquor illegally. The offence came to be registered on 30.7.1999, 9.2.2000 and 10.2.2000. On 30.7.1999 2 crimes were registered against him. The detaining authority took into consideration the facts of the above said 4 cases and relied upon the investigation and the fact that in bulk illegal liquor which is known as English liquor was seized from the petitioner. According to the detaining authority, after full consideration of the above said papers, the detaining authority reached to the subject satisfaction that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act and was dealing in illegal liquor. It was mentioned that dealing and selling illegal liquor was injurious to public health and therefore, the activities of the petitioner were anti-social and illegal. The detaining authority further indicated that the illegal and anti social activity of the petitioner was required to be prevented forthwith and hence after satisfying, the detaining authority passed the above said order.

#. Learned advocate Ms. Krishna Mishra for the petitioner and learned AGP Mr. Uday Bhatt for the respondents were heard at length.

#. The detention order was attacked on many grounds. From the record it appears that all the grounds advanced on behalf of the petitioner are not required to be dealt with because the matter can be disposed of on one ground alone. The established principle of law is that the detaining authority is required to consider less drastic remedy available to him. The principle is established in the case of Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995(2) GLR 1134 by a decision of the Division Bench of this Court. This view is again fortified by the Division Bench of this Court in LPA 1056 of 1999 decided ion 15.9.1999. This amounts to a glaring infirmity which is not noticed at the time of service of the detention order. The petitioner was sent to judicial custody . Hence Pradumannagar Police Station , Rajkot City registered C.R.No. 38/2000. The fact that is further revealed during the arguments that the petitioner is still not on bail in this Crime Register. However, he

concerned detaining authority failed to consider the fact that the petitioner being in judicial custody, there was no occasion to deal with illegal liquor to continue his alleged anti social activity. The purpose of PASA Act is prevention of anti social activity forthwith as a last resort. In this case, since the petitioner was in judicial custody an aggravated action of preventive detention was not warranted in the circumstances. For these reasons, the concerned detention order passed on 1.3.2000 by the Police Commissioner, Rajkot City, Rajkot against the petitioner is vitiated because the same is without proper application of mind as aforesaid.

#. In this view of the matter, said detention order is required to be set aside . Hence the detention order passed by the Police Commissioner, Rajkot City, Rajkot on 1.3.2000 against the petitioner is set aside and quashed. The petitioner Savjibhai Gangarambhai Patel is ordered to be released forthwith if he is not required to be detained for any other purpose. Rule is made absolute. No order as to costs. Direct Service.

(J.R.Vora.J)

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